IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8460 OF 2005

Shri Siddharam G. Patil & Ors. .. Petitioners

Vs.

Shri Appasaheb G. Patil & ors. .. Respondents

Mr. Pankaj Das for petitioners.
Mr. Sachin Dhakephalkar for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : June 27, 2006.

P.C.:

1. Heard Mr. Das the learned counsel for the petitioners and Mr. Dhakephalkar the learned counsel for respondent nos.1 and 2.

2. In Regular Civil Suit No.1341 of 1999 an application came to be filed at Exh.61 was filed by the defendants and it was contended by the defendants by filing an application at Exh.68 that the said order was passed ex parte and on account of inadvertence under Order IX Rule 6. The defendants, therefore, prayed for recall of the said order by the application at Exh.68 and the learned Joint Civil Judge, Junior Division at Solapur has rejected the said application

by impugned order dated 28/9/2005.

3. On perusal of the record, the learned Judge of the trial court noted that the order passed at Exh.61 was under Order XVII Rule 2 and not under Order IX Rule 6 of C.P.C. He further noted that notices were served to the defendants vide Exh.51 and applications were filed at Exhs.59 and 60 for adjournment. On 7/12/2004 these applications were disposed off. The proceedings continued ex parte. Having considered the record, the learned Judge of the trial court concluded that the ex parte order passed on Exh.61 could not be set aside as the same was not by way of inadvertence and that it was, in fact, by way of application of mind. No fault could be found with the view taken by the trial court in the impugned order dated 28/9/2005.

4. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)